AMENDED IN ASSEMBLY JULY 11, 2005
AMENDED IN ASSEMBLY JUNE 23, 2005
AMENDED IN SENATE APRIL 18, 2005
AMENDED IN SENATE MARCH 29, 2005

## SENATE BILL

No. 385

## **Introduced by Senator Ducheny**

February 17, 2005

An act to amend Section 60640 of the Education Code, relating to pupil assessment.

## LEGISLATIVE COUNSEL'S DIGEST

SB 385, as amended, Ducheny. Pupil assessment.

Existing law, the Standardized Testing and Reporting (STAR) Program, requires each school district, charter school, and county office of education to administer to each of its pupils in grades 3 and 7 a designated achievement test and, until July 1, 2007, to each of its pupils in grades 2 to 11, inclusive, and after July 1, 2007, to each of its pupils in grades 3 to 11, inclusive, a standards-based achievement test.

Existing law requires, until July 1, 2007, a pupil of limited English proficiency who is enrolled in any of grades 2 to 11, inclusive, to take a test in his or her primary language if a test is available and fewer than 12 months have elapsed after the pupil's initial enrollment in a California public or nonpublic school.

Existing law, operative July 1, 2007, requires a pupil identified as limited English proficient who is enrolled in any of grades 3 to 11, inclusive, and has not been reclassified as proficient in English, to take a test in his or her primary language if a test is available and if

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fewer than 12 months have elapsed after his or her initial enrollment in any public school in the state.

This bill would instead provide that require a pupil who is required to take-an that achievement test-shall take that test in his or her primary language if a test is available, if the pupil is identified as limited English proficient, and is either literate in his or her primary language or receives instruction in his or her primary language. The bill would require a pupil who is limited-English-proficient, but for whom an achievement test in his or her primary language is not available, to instead take an achievement test in English that is modified in order to eliminate unnecessary linguistic complexity, to the extent possible. The bill would require a pupil identified as limited English proficient who has attended a school in the United States for at least 3 consecutive years to take an additional achievement test in English that is modified in order to eliminate unnecessary linguistic complexity, to the extent possible, except as specified. The bill would require the State Department of Education to develop a primary language assessment in the dominant primary language of limited-English-proficient pupils.

This bill would make other technical, nonsubstantive changes.

To the extent that this bill would impose additional duties on school districts, this bill would create a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

*The people of the State of California do enact as follows:* 

- 1 SECTION 1. (a) The Legislature finds and declares all of the following:
- 3 (1) Valid and reliable academic assessment data is critical to
- 4 the education accountability system.

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(2) Approximately one of every four pupils enrolled in the public schools is identified as a pupil with limited English proficiency.

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- (3) Exclusive reliance on academic assessments designed for native English speakers to gauge the academic progress of pupils with limited English proficiency violates standards for educational testing established by recognized national educational institutions including the American Educational Research Association, the American Psychological Association, and the National Council on Measurement in Education.
- (4) The federal No Child Left Behind Act of 2001 requires states to test all pupils in a valid and reliable manner and requires, to the extent practicable, that pupils with limited English proficiency be tested in the language and form most likely to yield accurate data on academic ability in academic subject areas.
- (5) The current academic assessment system does not allow pupils with limited English proficiency to show academic ability in academic subject areas.
- (6) An accountability system that would yield more accurate data on the academic ability of pupils with limited English proficiency is feasible and practicable.
- (7) A coalition of school districts, parents, and organizations from throughout the state recently filed a legal challenge that highlights the harm to pupils, parents, teachers, schools, and communities that may be resulting from invalid testing of pupils with limited English proficiency.
- (b) It is the intent of the Legislature to bring the system of assessing the academic progress of pupils with limited English proficiency into alignment with requirements of the federal No Child Left Behind Act of 2001.
- SEC. 2. Section 60640 of the Education Code, as amended by Section 15 of Chapter 233 of the Statutes of 2004, is amended to read:
- 35 60640. (a) There is hereby established the Standardized 36 Testing and Reporting Program, to be known as the STAR 37 Program.
- 38 (b) Commencing in the 2004-05 fiscal year and each fiscal 39 year thereafter, and from the funds available for that purpose, 40 each school district, charter school, and county office of

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education shall administer to each of its pupils in grades 3 and 7 the achievement test designated by the state board pursuant to Section 60642, and shall administer to each of its pupils in grades 2 to 11, inclusive, the standards-based achievement test provided for in Section 60642.5. The state board shall establish a testing period to provide that all schools administer these tests to pupils at approximately the same time during the instructional year, except as necessary to ensure test security and to meet the final filing date.

- (c) The publisher and the school district shall provide two makeup days for the testing of previously absent pupils within the testing period established by the state board in subdivision (b).
- (d) The governing board of the school district may administer achievement tests in grades, or to pupils, other than those required by subdivisions (b) and (f) as it deems appropriate.
- (e) Pursuant to paragraph (17) of subsection (a) of Section 1412 of Title 20 of the United States Code, individuals with exceptional needs, as defined in Section 56026, shall be included in the testing requirement of subdivision (b) with appropriate accommodations in administration, where necessary, and those individuals with exceptional needs who are unable to participate in the testing, even with accommodations, shall be given an alternate assessment.
- (f) (1) (A) A pupil identified as limited English proficient, and who either is literate in his or her primary language or receives instruction in his or her primary language, shall take an achievement test required by subdivision (b) in his or her primary language if a test is available.
- (B) (i) A pupil identified as limited English proficient who has attended a school in the United States, excluding the Commonwealth of Puerto Rico, for three consecutive years or more, shall, in addition to those achievement tests required by subparagraph (A), take an achievement test in English that is aligned to state-adopted language arts content standards.
- (ii) The department shall, by January 1, 2008, modify an achievement test administered pursuant to clause (i) in order to eliminate unnecessary linguistic complexity to the extent possible. The modifications shall be based upon research designed to maintain the rigor of the test but enable a pupil with

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limited English proficiency to better understand test directions and questions.

- (iii) Notwithstanding clause (i), a school district may, on a case-by-case basis, administer an achievement test in the primary language of a pupil if it finds that it is likely that a primary language test would yield an assessment that is more accurate and reliable. This authorization shall not exceed two consecutive years for a particular pupil.
- (C) A pupil identified as limited-English-proficient for whom a test in his or her primary language is not available shall take an achievement test required by subdivision (b) in English that is modified pursuant to clause (ii) of subparagraph (B).

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- (D) An achievement test administered pursuant to this subdivision shall yield assessment data that is more accurate than that data that yields from an achievement test in English required by subdivision (b). Results of an achievement test administered pursuant to this subdivision may also be disaggregated by type of program, duration in a program, and English proficiency. Results of an achievement test administered pursuant to this subdivision shall be used to determine adequate yearly progress pursuant to the federal No Child Left Behind Act of 2001, and for purposes of the Academic Performance Index.
- (2) Notwithstanding any other law, the state board shall designate for use, as part of this program, a single primary language test in each language for which a test is available for grades 2 to 11, inclusive, pursuant to the process used for designation of the assessment chosen in the 1997-98 fiscal year, as specified in Sections 60642 and 60643, as applicable.
- (3) (A) The department shall use funds made available pursuant to Title VI of the federal No Child Left Behind Act of 2001 and appropriated by the annual Budget Act for the purpose of developing and adopting primary language versions of assessments required by subdivision (b) that are aligned to the state academic content standards in the dominant primary language of limited-English-proficient pupils no later than July 1, 2008. The dominant primary language shall be determined by the count in the annual language census of the primary language of each limited-English-proficient pupil enrolled in the California public schools. The department shall, by January 1, 2007,

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conduct a survey of public schools in order to identify and quantify assessments in languages other than the dominant primary language, and develop criteria to determine when assessments in languages other than the dominant primary language should be administered.

- (B) Once a dominant primary language assessment is available for use for a specific grade level, it shall be administered in place of the assessment designated pursuant to paragraph (1) for that grade level.
- (C) In choosing a contractor to develop a primary language assessment, the state board shall consider the criteria for choosing a contractor or test publisher as specified by Sections 60642 and 60643, and as specified by Section 60642.5, as applicable.
- (D) Subject to the availability of funds, the assessments shall be developed in grade order starting with the lowest grade subject to the STAR Program.
- (E) If the state board contracts for the development of primary language assessments or test items to augment an existing assessment, the state shall retain ownership rights to the assessment and the test items. With the approval of the state board, the department may license the test for use in other states subject to a compensation agreement approved by the Department of Finance.
- (F) On or before January 1, 2007, the department shall submit to the Legislature a report on the development and implementation of the initial primary language assessments and modified English language assessments and recommendations on the development and implementation of future assessments and funding requirements.
- (g) (1) The Superintendent shall apportion funds to school districts to enable school districts to meet the requirements of subdivisions (b) and (f).
- (2) The state board shall annually establish the amount of funding to be apportioned to school districts for each test administered and shall annually establish the amount that each publisher shall be paid for each test administered under the agreements required pursuant to Section 60643. The amounts to be paid to the publishers shall be determined by considering the cost estimates submitted by each publisher each September and

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the amount included in the annual Budget Act, and by making allowance for the estimated costs to school districts for compliance with the requirements of subdivisions (b) and (f).

- (3) An adjustment to the amount of funding to be apportioned per test may not be valid without the approval of the Director of Finance. A request for approval of an adjustment to the amount of funding to be apportioned per test shall be submitted in writing to the Director of Finance and the chairpersons of the fiscal committees of both houses of the Legislature with accompanying material justifying the proposed adjustment. The Director of Finance is authorized to approve only those adjustments related to activities required by statute. The Director of Finance shall approve or disapprove the amount within 30 days of receipt of the request and shall notify the chairpersons of the fiscal committees of both houses of the Legislature of the decision.
- (h) For the purposes of making the computations required by Section 8 of Article XVI of the California Constitution, the appropriation for the apportionments made pursuant to paragraph (1) of subdivision (g), and the payments made to the publishers under the contracts required pursuant to Section 60643 or subparagraph (C) of paragraph (1) of subdivision (a) of Section 60605 between the department and the contractor, are "General Fund revenues appropriated for school districts," as defined in subdivision (c) of Section 41202, for the applicable fiscal year, and included within the "total allocations to school districts and community college districts from General Fund proceeds of taxes appropriated pursuant to Article XIII B," as defined in subdivision (e) of Section 41202, for that fiscal year.
- (i) As a condition to receiving an apportionment pursuant to subdivision (g), a school district shall report to the Superintendent all of the following:
- (1) The number of pupils enrolled in the school district in grades 2 to 11, inclusive.
- (2) The number of pupils to whom an achievement test was administered in grades 2 to 11, inclusive, in the school district.
- (3) The number of pupils in paragraph (1) who were exempted from the test at the request of their parents or guardians.
- (j) This section shall become inoperative on July 1, 2007, and as of January 1, 2008, is repealed, unless a later enacted statute that becomes operative on or before January 1, 2008, deletes or

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1 extends the dates on which it becomes inoperative and is 2 repealed.

- SEC. 3. Section 60640 of the Education Code, as added by Section 16 of Chapter 233 of the Statutes of 2004, is amended to read:
- 60640. (a) There is hereby established the Standardized Testing and Reporting Program, to be known as the STAR Program.
- (b) Commencing in the 2007-08 fiscal year and each fiscal year thereafter, and from the funds available for that purpose, each school district, charter school, and county office of education shall administer to each of its pupils in grades 3 and 7 the achievement test designated by the state board pursuant to Section 60642, and shall administer to each of its pupils in grades 3 to 11, inclusive, the standards-based achievement test provided for in Section 60642.5. The state board shall establish a testing period to provide that all schools administer these tests to pupils at approximately the same time during the instructional year, except as necessary to ensure test security and to meet the final filing date.
- (c) The publisher and the school district shall provide two makeup days for the testing of previously absent pupils within the testing period established by the state board in subdivision (b).
- (d) The governing board of the school district may administer achievement tests in grades, or to pupils, other than those required by subdivisions (b) and (f) as it deems appropriate.
- (e) Pursuant to paragraph (17) of subsection (a) of Section 1412 of Title 20 of the United States Code, individuals with exceptional needs, as defined in Section 56026, shall be included in the testing requirement of subdivision (b) with appropriate accommodations in administration, where necessary, and those individuals with exceptional needs who are unable to participate in the testing, even with accommodations, shall be given an alternate assessment.
- (f) (1) A pupil identified as limited English proficient, and who either is literate in his or her primary language or receives instruction in his or her primary language, shall take an achievement test required by subdivision (b) in his or her primary language if a test is available.

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(2) (A) A pupil identified as limited English proficient who has attended a school in the United States, excluding the Commonwealth of Puerto Rico, for three consecutive years or more, shall, in addiction to those achievement tests required by paragraph (1), take an achievement test in English that is aligned to state-adopted language arts content standards.

- (B) The department shall, by January 1, 2008, modify an achievement test administered pursuant to subparagraph (A) in order to eliminate unnecessary linguistic complexity to the extent possible. The modifications shall be based upon research designed to maintain the rigor of the test but enable a pupil with limited English proficiencies to better understand test directions and questions.
- (C) Notwithstanding subparagraph (A), a school district may, on a case-by-case basis, administer an achievement test in the primary language of a pupil if it finds that it is likely that a primary language test would yield an assessment that is more accurate and more reliable. This authorization shall not exceed two consecutive years for a particular pupil.
- (3) A pupil identified as limited-English-proficient for whom a test in his or her primary language is not available shall take an achievement test required by subdivision (b) in English that is modified pursuant to subparagraph (B) of paragraph (2).

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(4) An achievement test administered pursuant to this subdivision shall yield assessment data that is more accurate than that data that yields from an achievement test in English required by subdivision (b). Results of an achievement test administered pursuant to this subdivision may also be disaggregated by type of program, duration in a program, and English proficiency. Results of an achievement test administered pursuant to this subdivision shall be used to determine adequate yearly progress pursuant to the federal No Child Left Behind Act of 2001, and for purposes of the Academic Performance Index.

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(5) Notwithstanding any other provision of law, the state board shall designate for use, as part of this program, a single primary language test in each language for which a test is available for grades 3 to 11, inclusive, pursuant to the process used for designation of the assessment chosen in the 1997-98 fiscal year,

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as specified by Sections 60642 and 60643, and as specified by Section 60642.5, as applicable.

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- (6) (A) The department shall use funds made available pursuant to Title VI of the federal No Child Left Behind Act of 2001 and appropriated by the annual Budget Act for the purpose of developing and adopting primary language versions of assessments required by subdivision (b) that are aligned to the state academic content standards in the dominant primary language of limited-English-proficient pupils no later than July 1, 2008. The dominant primary language shall be determined by the count in the annual language census of the primary language of each limited-English-proficient pupil enrolled in the California public schools. The department shall, by January 1, 2007, conduct a survey of public schools in order to identify and quantify assessments in languages other than the dominant primary language, and develop criteria to determine when assessments in languages other than the dominant primary language should be administered.
- (B) Once a dominant primary language assessment is available for use for a specific grade level, it shall be administered in place of the assessment designated pursuant to paragraph (1) for that grade level.
- (C) In choosing a contractor to develop a primary language assessment, the state board shall consider the criteria for choosing a contractor or test publisher as specified by Sections 60642 and 60643, and as specified by Section 60642.5, as applicable.
- (D) Subject to the availability of funds, the assessments shall be developed in grade order starting with the lowest grade subject to the STAR Program.
- (E) If the state board contracts for the development of primary language assessments or test items to augment an existing assessment, the state shall retain ownership rights to the assessment and the test items. With the approval of the state board, the department may license the test for use in other states subject to a compensation agreement approved by the Department of Finance.
- 39 (g) (1) The Superintendent of Public Instruction shall 40 apportion funds to school districts to enable school districts to

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meet the requirements of subdivision (b), the alternative assessment required by subdivision (e), and subdivision (f).

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- (2) The state board shall annually establish the amount of funding to be apportioned to school districts for each test administered and shall annually establish the amount that each publisher shall be paid for each test administered under the agreements required pursuant to Section 60643. The amounts to be paid to the publishers shall be determined by considering the cost estimates submitted by each publisher each September and the amount included in the annual Budget Act, and by making allowance for the estimated costs to school districts for compliance with the requirements of subdivision (b), the alternative assessment required by subdivision (e), and subdivision (f).
- (3) An adjustment to the amount of funding to be apportioned per test may not be valid without the approval of the Director of Finance. A request for approval of an adjustment to the amount of funding to be apportioned per test shall be submitted in writing to the Director of Finance and the chairpersons of the fiscal committees of both houses of the Legislature with accompanying material justifying the proposed adjustment. The Director of Finance is authorized to approve only those adjustments related to activities required by statute. The Director of Finance shall approve or disapprove the amount within 30 days of receipt of the request and shall notify the chairpersons of the fiscal committees of both houses of the Legislature of the decision.
- (h) For the purposes of making the computations required by Section 8 of Article XVI of the California Constitution, the appropriation for the apportionments made pursuant to paragraph (1) of subdivision (g), and the payments made to the publishers under the contracts required pursuant to Section 60643 or subparagraph (C) of paragraph (1) of subdivision (a) of Section 60605 between the department and the contractor, are "General Fund revenues appropriated for school districts," as defined in subdivision (c) of Section 41202, for the applicable fiscal year, and included within the "total allocations to school districts and community college districts from General Fund proceeds of taxes appropriated pursuant to Article XIII B," as defined in subdivision (e) of Section 41202, for that fiscal year.

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(i) As a condition to receiving an apportionment pursuant to subdivision (g), a school district shall report to the Superintendent all of the following:

- (1) The number of pupils enrolled in the school district in grades 3 to 11, inclusive.
- (2) The number of pupils to whom an achievement test was administered in grades 3 to 11, inclusive, in the school district.
- (3) The number of pupils in paragraph (1) who were exempted from the test at the request of their parents or guardians.
- (j) The Superintendent and the state board are authorized and encouraged to assist postsecondary educational institutions to use the California Standards Tests for academic credit, or placement, and admissions processes, or both purposes.
- (k) The Superintendent shall, with the approval of the state board, annually release to the public at least 25 percent of test items from the standards-based achievement test provided for in Section 60642.5 from the test administered in the previous year.
  - (1) This section shall become operative July 1, 2007.
- SEC. 4. If the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code.